

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

9 UNITED STATES OF AMERICA,)	2:11-cr-00427-HDM-CWH
)	2:13-cv-01068-HDM
10 Plaintiff,)	
)	
11 vs.)	ORDER
)	
12 JOSE RIVERA-CARBAJAL,)	
)	
13 Defendant.)	
)	

14 In his motion to vacate, set aside, or correct sentence
15 pursuant to 28 U.S.C. § 2255, defendant argues in one of his claims
16 that his conviction for battery constituting domestic violence
17 (third offense) was not a crime of violence, and that his attorneys
18 were therefore ineffective for failing to object to the 16-level
19 enhancement under U.S.S.G. § 2L1.2(b)(1)(A)(ii). To the extent it
20 can be argued that battery under Nevada law is not categorically a
21 crime of violence, *see United States v. Moreno-Tobar*, 452 Fed.
22 App'x 763 (9th Cir. 2011) (unpublished disposition); *Ortega-Mendez*
23 *v. Gonzales*, 450 F.3d 1010 (9th Cir. 2006); *Hobbs v. State of*
24 *Nevada*, 251 P.2d 177 (Nev. 2011), counsel should advise the court
25 of the evidence relied upon in determining that defendant was
26 subject to the 16-level enhancement. Accordingly, on or before
27 February 3, 2014:
28

